



HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING  
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**TECHNICAL STAFF REPORT**  
**Petition Accepted on February 7, 2007**  
**Planning Board Meeting of March 29, 2007**  
**County Council Hearing to be scheduled**

**Case No./Petitioner:** ZRA-83 – Mary Kay Sigaty, Councilperson

**Request:** To amend Section 100.E. of the Zoning Regulations to create a grandfathering clause that would require cases that are under judicial review to be subject to Zoning Regulation changes for all pending and future proceedings and action of any Board, Hearing Examiner or agency empowered to decide applications under the Zoning Regulations.

**Department of Planning and Zoning Recommendation:**

**DENIAL**

1. DESCRIPTION OF PROPOSAL

- The Petitioner proposes an amendment to Section 100.E. of the Zoning Regulations to create a grandfathering clause that would require cases that are under judicial review to be subject to Zoning Regulation changes for all pending and future proceedings and action of any Board, Hearing Examiner or agency empowered to decide applications under the Zoning Regulations.
- The Petitioner states that the reason for the amendment is to ensure that future development projects adhere to new regulations which seek to protect the public good by incorporating creative, acceptable urban design efforts for future development. The Petitioner notes that the Howard County development process is a complicated, multi-layered process that seeks to ensure residents of the county are provided with high quality developments that have minimal impact on citizens.
- The proposed amendment would add text to Section 100.E. as follows (CAPITALS indicate text to be added):

**E. Construction and Effective Date**

1. These regulations upon enactment shall be the sole Zoning Regulations of Howard County. The provisions of these regulations are minimum requirements and shall be in addition to any other requirements of the law. Where higher standards are required by other regulations, the higher standards shall apply unless the particular provision of these regulations expressly provides otherwise.

2. However, the requirements of the Zoning Regulations adopted September 18, 1992 for the western area of the County covered by the 1992 Comprehensive Zoning and October 18, 1993 for the eastern area covered by the 1993 Comprehensive Zoning with respect to the bulk regulations shall apply to any lot described in a deed or on an approved subdivision plat and recorded in the land records of Howard County no later than five days after the enactment of these regulations, and unable to fulfill minimum requirements of these regulations.
3. Any amendment or change to the Zoning Regulations, whether previously or hereafter adopted, shall be applicable to all pending and future proceedings and actions of any Board, Hearing Examiner or agency empowered to decide applications under these regulations, whether decided on original application or remand from Court, INCLUDING ANY JUDICIAL REVIEW THEREOF unless the amendment or change expressly provides that it only applies to future proceedings and actions.
  - a. Cases that require a Decision and Order are considered pending unless the Decision and Order is signed by the Board FOR A CASE THAT IS NOT APPEALED OR PETITIONED FOR JUDICIAL REVIEW, the Hearing Examiner for a case is not appealed, or the Department of Planning and Zoning prior to the date the legislation is adopted, except that:
    - (1) Any conditional use application filed on or before March 5, 2001 shall be subject to the regulations in effect prior to the effective date of Council Bill No. 11-2001; and
    - (2) Any age-restricted adult housing conditional use application filed on or before July 7, 2003, shall be subject to the regulations in effect prior to the effective date of Council Bill No. 49-2003.
    - (3) Any age-restricted adult housing conditional use application filed after July 7, 2003 and before January 3, 2005, shall be subject to the regulations in effect prior to the effective date of Council Bill No. 02-2005.
    - (4) Any conditional use that would be prohibited by a map amendment is considered pending unless the site development plan is technically complete prior to the date the zoning map amendment is adopted.
  - b. Applications for subdivision or site development plan approval are considered pending unless the initial residential plan submittal, as defined in the Subdivision and Land Development Regulations, or the site development plans for all other types of development is technically complete prior to the date the legislation is adopted AND ANY DECISION ON THE PLAN IS NOT APPEALED OR PETITIONED FOR JUDICIAL REVIEW, except that":
    - (1) Development projects of over 300 units which have processed site development plans on at least 50% of the overall site shall not be considered pending.
    - (2) Sketch plans, which have received a technically complete letter from the Department of Planning and Zoning prior to November 1, 2001, shall be subject to the regulations in effect prior to the effective date of Council Bill No. 50-2001.

- (3) Any parcel in the CAC District which had a subdivision plat recorded before November 30, 2004 may either be developed under CAC District or, as a matter of right, under the zoning district that applied to that parcel on November 30, 2004.
- c. Applications for permits issued in accordance with Section 128 of the regulations are considered pending unless a written approval is issued by the Department of Planning and Zoning prior to the date the legislation is adopted.

## **II. EXISTING REGULATIONS**

Currently, the Construction and Effective Date requirements of the Zoning Regulations are silent regarding amendments or changes to the Zoning Regulations for zoning amendment petitions under judicial review prior to the date the legislation is adopted. Grandfathering provisions for petitions or applications in which a decision has already been made by any entity listed, but which are under judicial review are not specifically mentioned.

The Regulations currently allow no retroactive protection or grandfathering to pending and future proceedings and actions of any Board, Hearing Examiner or agency empowered to decide applications under these regulations, whether decided on original application or remand from Court, unless the amendment or change expressly provides that it only applies to future proceedings and actions.

## **III. BACKGROUND INFORMATION**

### **A. Scope of Proposed Amendments**

- The proposed amendment would add a provision that any petition for an amendment or change to the Zoning Regulations undergoing judicial review is considered pending and would be subject to the same application of newly adopted changes as any active petition which has not been finally decided by any Board, Hearing Examiner or agency empowered to decide applications under these regulations.
- The proposed amendment would also apply to applications for subdivisions or site development plans unless they are technically complete prior to the date the legislation is adopted and any decision on the plan is not appealed or petitioned for judicial review.

## **IV. EVALUATIONS AND CONCLUSIONS**

### **A. Relation to the General Plan**

- The Petitioner states that the amendment would be in harmony with the Howard County General Plan Policy 5.20, "Improve communication between citizens and County agencies and encourage active, sustained public participation".

While improved communication between citizens and county agencies is supported by the General Plan, care must be exercised in balancing the desire to strengthen the requirements for future development with equity for development proposals initiated under previous regulations.

**B. Relation to the Zoning Regulations**

- Section 100.E. has been revised in the past to try to balance the desire to strengthen the requirements for future development against equity for development proposals initiated under previous regulations. Changing the regulations for a project that has a completed design and has building permits issued is a departure from past Howard County grandfathering practices, as well as those of surrounding jurisdictions.
- Regulations currently exist specifying that upon the effective date of any adopted Zoning Regulations, the amendments become applicable to either ongoing undecided cases or cases which have been remanded by Court action for a new decision. The proposal to apply this same regulation to cases which have been decided and are under judicial review would occur much later in the review process than historically allowed under the regulations, and would convey to property owners, developers and citizens that development regulations are not predictable and can be changed at any time in the process. While this amendment was prompted by the WCI Plaza Residences in Downtown Columbia, it would apply to any development proposal that has been appealed. As such, it has far reaching consequences. Any development proposal could be put in jeopardy by a single appellant, regardless of the merits of the appeal.

**C. Agency Comments**

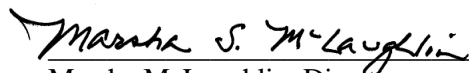
The following agency had no objections to the amendments as proposed:

1. Department of Inspections, Licenses and Permits

**V. RECOMMENDATION**

**DENIAL**

For the reasons noted above, the Department of Planning and Zoning recommends that the request to amend Section 100.E. of the Zoning Regulations to create a grandfathering clause that would require cases that are under judicial review to be subject to Zoning Regulation changes for all pending and future proceedings and action of any Board, Hearing Examiner or agency empowered to decide applications under the Zoning Regulations be DENIED.

  
Marsha McLaughlin, Director

04/10/07  
Date

NOTE: The file is available for public review at the Department of Planning and Zoning Public Information Counter.

MM/ZLK/zlk

MEMO TO: Department of Planning and Zoning

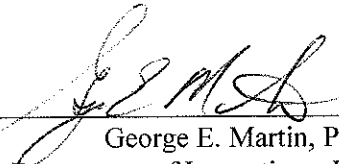
FROM: Department of Inspections, Licenses and Permits

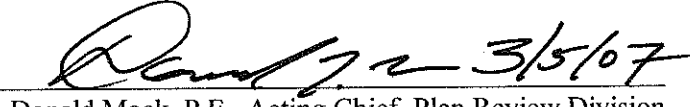
Petition No.: **ZRA-83** Date Due: **3/12/07** Date Rec'd: **2/28/07**

Applicant: **Mary Kay Sigaty, Council Person**

Nature of Petition: **To amend zoning regulation secitn 100.E (General Provisions), to create a grandfathering clause that would require cases under judicial review to be subject to zoning regulation changes.**

This office has **no** objection to the approval of this petition.

 3/5/07  
George E. Martin, Plan Review Division  
Department of Inspections, Licenses and Permits

 3/5/07  
Donald Mock, P.E., Acting Chief, Plan Review Division  
Department of Inspections, Licenses and Permits